

**INTHEUNITEDSTATESDISTRICTCOURT
FORTHEEASTERNDISTRICTOFFPENNSYLVANIA**

JOHNSCIOTTOandCATHERINEP.	:	CIVILACTION
SCIOTTOonbehalfofLOUIS	:	
SCIOTTO,aMinor,ashisparents	:	
andnaturalguardians,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
MARPLENEWTOWNSCHOOLDISTRICT,	:	
JAMESSMITH,STUNATHANS,and	:	
GREGFENDLER,	:	
	:	
Defendant.	:	NO.98-2768

MEMORANDUM

Reed,S.J.

October13,1999

BeforetheCourtisthemotionofthePennsylvaniaSchoolBoardsAssociationInsurance Trust(“Trust”)toparticipate *amicuscuriae*. Insupportofitsmotion,theTruststatesthatit “providesnumerousinsurancerelatedservicesforandonbehalfofpublicschoolentitiesinthe CommonwealthofPennsylvania,includingschooldistricts...”Motion,at¶2;thatitparticipates regularlyinlitigationasapartyoramicus, seeMotion,at¶4;thatcounselfortheTrustisan expertininsuranceasitrelatestopublicschoolentities, seeMotion,at¶5;andthattheTrust “canprovidethecourtwithinsightsastohowthiscasemayimpactpublicschoolsandthe insurancemarketplaceforschooldistricts,” seeMotion,at¶6.

II. ANALYSIS

Meaning“friendofthecourt,” *amicuscuriae* hashistoricallybeenusedtodescribe“an impartialindividualwhosuggeststheinterpretationandstatusofthelaw,givesinformation concerningit,andwhosefunctionistoadviseinorderthatjusticemaybedone,ratherthanto advocateapointofviewsothatacausemaybewonbyonepartyoranother.” Leighv.Engle,

535 F.Supp.418,419 (N.D.Ill.1982) (citation omitted). Amici are not parties to the case, but rather assist the court by “submitting briefing designed to supplement and assist in cases of general public interest, supplement the efforts of counsel, and draw the court’s attention to law that might otherwise escape consideration.” Community Association for Restoration of the Environment v. De Ruter Brothers Dairy, 54 F.Supp.2d 974, 975 (E.D. Wash. 1999) (citations omitted).

“District courts have broad discretion to appoint amicus curiae.” Liberty Lincoln v. Ford Marketing Corp., 149 F.R.D. 65, 82 (D.N.J. 1993) (citations omitted). Amicus status is typically granted when the following conditions are present: (1) petitioner has a “special interest” in the particular case, see Waste Management of Pa. v. City of York, 162 F.R.D. 34, 36 (M.D. Pa. 1995); (2) petitioner’s interest is not represented competently or at all in the case, see Liberty Lincoln, 149 F.R.D. at 82; (3) the proffered information is timely and useful, see Hoptowitz v. Ray, 682 F.2d 1237, 1260 (9th Cir. 1982); and (4) petitioner is not partial to a particular outcome in the case, see Yip v. Pagano, 606 F.Supp. 1566 (D.N.J. 1985), but see Hoptowitz, 682 F.2d at 1260 (“there is no rule... that amicus be totally disinterested”).

Applying these four criteria, it is clear that appointing the Trust amicus curiae in the present case is not appropriate. First, the Trust has failed to demonstrate the particularized kind of “special interest” courts have looked for in amicus cases. For instance, in Waste Management, the EPA was granted amicus status because it issued the administrative order that was at issue in the case, see 162 F.R.D. at 35, and in Yip, which was a defamation action based on statements made before the United States House of Representatives, amicus status was granted to a leadership group of House members concerned with the historically privileged nature of congressional testimony, see 606 F.Supp. at 1567. By contrast, the Trust is merely a trade

association with a generalized interest in all cases related to school district liability and insurance. This is not the kind of special interest that warrants amicus status.

Petitioner fails these second prong as well, as the interests of school board insurers are more than adequately represented by the school district and its able counsel, Joseph T. Bodell, Esq., who apparently is appointed and compensated by the school district's insurer. The interest of the school district in limiting its liability in the present case is identical to the interest of the Trust in limiting the liability of school districts in general. Counsel for Marple Newtown School District, including Mr. Bodell, and Mark Sereni, general counsel for Marple Newtown School District, are more than competent to represent the interests of the school district and the Trust in this case. If that were not enough, counsel for the petitioner has already entered an appearance on behalf of Marple Newtown, see Appearance of Michael I. Levin for Defendant Marple Newtown, Document No. 70, (filed April 23, 1999) and thus, Marple Newtown and the Court will benefit from Mr. Levin's considerable expertise (a description of which forms a large part of the Trust's motion) regardless of the outcome of this motion.

Third, the Trust proffers no particular information to the Court other than its "insights," Motion, at ¶5, and "argument from time to time on issues of statewide importance to school district[sic]," Motion, at ¶9. Petitioner's motion promises nothing more than a brief in support of the Marple Newtown School District's motion for permission to appeal. Petitioner has not satisfied the Court that it will provide any information that the Court will find "useful" or "timely" in this particular case.

Fourth, the petitioner cannot be said to be impartial in the matter before the Court. Petitioner, as an association of school district insurers, has a specific pecuniary interest in the defendant's perspective in this particular case, and makes no attempt to present itself as a neutral

party.¹ Where “amicus represent[] business interests that will be ultimately and directly affected by the court’s ruling on the substantive matter before it,” amicus participation is not appropriate. See Yip, 606 F. Supp. at 1568. While it is acknowledged that partiality of amici is not dispositive, it is “a factor to consider in deciding whether to allow participation.” Waste Management, 162 F. R. D. at 36. It is apparent to this Court that the petitioner is better characterized as “amicus reus,” or friend of the defendant, than amicus curiae. See Leigh, 535 F. Supp. at 422.

On a more general note, petitioner’s potential contributions to the case would come largely at the policy level—as stated in its motion, the Trust will contribute its “unique perspective” on the “significant effect [of this case] on all public school entities and on the insurance marketplace.” Motion at ¶7. While policy arguments are certainly interesting and perhaps helpful at the appellate level, they are not the currency of a trial court. If policy arguments are to be the Trust’s only contribution to this case, then the judicial process is better served if the Trust did not contribute at the district court level.

Based on the foregoing analysis, I cannot conclude in my discretion that petitioner has satisfied the requirements for participation as amicus curiae. Accordingly, the motion of the Pennsylvania School Boards Association Insurance Trust will be denied.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT

¹ In its petition, the Trust states that it disagrees with this Court’s holding on defendants’ motions for summary judgment, see Motion, at ¶7, agrees with Marple Newtown’s arguments in support of its motion for permission to appeal the court’s order, see id. at ¶8. Furthermore, petitioner’s draft order states that the Trust will participate “in support of the Marple Newtown School District.” Id.

FORTHEEASTERNDISTRICTOFPENNSYLVANIA

JOHN SCIOTTO and CATHERINE P.	:	CIVIL ACTION
SCIOTTO on behalf of LOUIS	:	
SCIOTTO, a Minor, as his parents	:	
and natural guardians,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
MARPLE NEW TOWN SCHOOL DISTRICT,	:	
JAMES SMITH, STUNATHANS, and	:	
GREG FENDLER,	:	
	:	
Defendant.	:	NO. 98-2768

ORDER

AND NOW, this 13th day of October 1999, upon consideration of the motion of the Pennsylvania School Boards Association Insurance Trust to participate as amicus curiae (Document No. 130) and plaintiffs' response thereto (Document No. 135), and having concluded, in my discretion, that petitioner's participation as amicus curiae would not be appropriate or helpful to the Court, it is hereby **ORDERED** that petitioner's motion is **DENIED**.

LOWELLA REED, JR., S.J.